



8011-01

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-76278; File No. SR-FICC-2015-004)

October 27, 2015

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide Additional Details Regarding the Requirement that Members Participate in Annual Testing of Business Continuity and Disaster Recovery Plans

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 26, 2015, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act and Rule 19b-4(f)(6)<sup>4</sup> thereunder. The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a change to Rule 3 of the Clearing Rules of the Mortgage-Backed Securities Division (“MBSD,” and its Clearing Rules, “MBSD Rules”) of FICC and Rule 3 of the Rulebook of the Government Securities Division (“GSD,” and its Rulebook, “GSD Rules”) of FICC to provide additional details regarding

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

the requirement that MBSD and GSD Members participate in annual testing of FICC's business continuity and disaster recovery plans ("BCP Testing").<sup>5</sup>

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend Rule 3 (Ongoing Membership Requirements) of the MBSD Rules and Rule 3 (Ongoing Membership Requirements) of the GSD Rules to provide additional details regarding the requirement that MBSD and GSD Members participate in FICC's annual BCP Testing. Currently, pursuant to Rule 2A (Initial Membership Requirements) of the MBSD Rules and Rule 2A (Initial Membership Requirements) of the GSD Rules, each applicant for membership of either MBSD or GSD must fulfill operational testing requirements, as established by FICC, that may be imposed to ensure the operational capability of the applicant."<sup>6</sup> Once a firm becomes a Member of GSD or MBSD, MBSD Rule 3 and GSD Rule 3 each of their

---

<sup>5</sup> Terms not otherwise defined herein have the meaning set forth in the MBSD Rules and GSD Rules available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

<sup>6</sup> Rule 2A, Section 2 of MBSD Rules and Rule 2A, Section 5 of GSD Rules, supra, note 5.

respective [sic] provides that Members may be required to fulfill certain operational testing requirements that may be imposed by FICC to test and monitor the continuing operational capability of the Members.<sup>7</sup>

Recently, the Commission promulgated Regulation Systems Compliance and Integrity (“Reg. SCI”), which requires FICC to establish standards to designate members<sup>8</sup> and requires participation by such designated members in scheduled BCP Testing with FICC on an annual basis.<sup>9</sup> Although FICC already conducts annual BCP Testing with certain MBSD and GSD Members,<sup>10</sup> FICC is proposing to amend Rule 3 of the MBSD Rules and Rule 3 of the GSD Rules to further describe the requirement with respect to BCP Testing.

The proposed amendments to Rule 3 of the MBSD Rules and Rule 3 of the GSD Rules would increase transparency regarding BCP Testing, and ensure FICC’s practice with respect to such testing is consistent with Reg. SCI by setting forth FICC’s rights to: (i) designate MBSD and GSD Members required to participate in BCP Testing using established standards; (ii) determine the scope and reporting of such BCP Testing; and

---

<sup>7</sup> Rule 3, Section 6 of MBSD Rules and Rule 3 Section 5 of GSD Rules, supra, note 5.

<sup>8</sup> 17 CFR 242.1004(a). In adopting Reg. SCI, the Commission determined not to require covered entities to notify the Commission of its designations or the standards that will be used in designating members, recognizing instead that each entity’s standards, designations, and updates, if applicable, would be part of its records and, therefore, available to the Commission and its staff upon request. See Securities and Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (File No. S7-01-13).

<sup>9</sup> 17 CFR 242.1004(a) and (b).

<sup>10</sup> Rule 3, Section 6 of MBSD Rules and Rule 3 Section 5 of GSD Rules, supra, note 5.

(iii) require MBSD and GSD Members to comply with such BCP Testing within specified timeframes. In connection with these proposed amendments, FICC would refine the factors that it currently uses to designate MBSD and GSD Members for BCP Testing. For example, while FICC would continue to rely on activity-based thresholds to mandate participation with annual BCP Testing, FICC would also take into account additional factors when designating firms for BCP Testing, including, but not limited to: (i) significant operational issues of the MBSD or GSD Member during the past twelve months; and (ii) past performance of the MBSD or GSD Member with respect to BCP Testing. MBSD and GSD Members would be informed of the specific standards that would be used by FICC, along with any updates or changes to these standards, which would be applied on a prospective basis, through established methods of communication between FICC and the Members of MBSD and GSD. Likewise, MBSD and GSD Members would be notified in advance that they have been designated to participate in BCP Testing for the upcoming year, and would be provided details concerning the nature of such testing as the particular test plans are determined.

FICC believes the proposed rule change would have no impact on MBSD and GSD Members relative to what those Members are currently required to do. As described above, FICC already requires certain MBSD and GSD Members to participate in BCP Testing on an annual basis. The proposed rule change provides further clarity with respect to these requirements for consistency with Reg. SCI.

## 2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the MBSD Rules and GSD Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.<sup>11</sup>

Rule 17Ad-22(d)(2), promulgated under the Act, requires FICC to require that MBSD and GSD Members have robust operational capacity to meet obligations arising from participation in the clearing agency, to monitor that its participation requirements are met on an ongoing basis, and to have participation requirements that are objective and publicly disclosed.<sup>12</sup> Rule 17Ad-22(d)(4), promulgated under the Act, requires FICC to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures, and have business continuity plans that allow for timely recovery of operations and fulfillment of the clearing agency's obligations.<sup>13</sup>

Rule 1004(a) and (b) of Reg. SCI requires FICC to establish standards for the designation of those MBSD and GSD Members that FICC reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of its business continuity and disaster recovery plans, and to designate MBSD and GSD Members pursuant to those standards and require participation by such designated firms in scheduled BCP Testing annually.<sup>14</sup>

---

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>12</sup> 17 CFR 240.17Ad-22(d)(2).

<sup>13</sup> 17 CFR 240.17Ad-22(d)(4).

<sup>14</sup> 17 CFR 242.1004(a) and (b).

By facilitating the testing of how business continuity and disaster recovery plans function between FICC and the MBSD and GSD Members during an emergency, the proposed rule change would facilitate the prompt and accurate clearance and settlement of securities transactions and protect investors and the public interest consistent with of the Act. The proposed rule change would provide additional details to the MBSD Rules and GSD Rules regarding the requirement for MBSD and GSD Members to take part in its BCP Testing annually, strengthening its compliance with Rule 17Ad-22(d)(2) and (4).<sup>15</sup> Further, the proposed rule change would foster the objectives of the Commission under Reg. SCI by helping to ensure resilient and available markets.<sup>16</sup>

As such, FICC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, Rule 17Ad-22(d)(2) and (d)(4), promulgated under the Act, and Rule 1004(a) and (b) of Reg. SCI, cited above.

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule change would impose any burden on competition because the proposed rule change would apply to all MBSD and GSD Members and only provides additional details regarding an existing requirement.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

---

<sup>15</sup> 17 CFR 240.17Ad-22(d)(2) and (4).

<sup>16</sup> 17 CFR 242.1004(a) and (b).

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)<sup>17</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>20</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

FICC has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to FICC, the proposed rule change does not present any novel or controversial issues. Rather, FICC is merely providing additional details regarding BCP Testing requirements or adding

---

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the FICC to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

provisions that are consistent with or required by Reg. SCI. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow FICC to incorporate changes required under Reg. SCI prior to the November 3, 2015 compliance date. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>21</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2015-004 on the subject line.

---

<sup>21</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FICC-2015-004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-FICC-2015-004 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

Robert W. Errett  
Deputy Secretary

---

<sup>22</sup> 17 CFR 200.30-3(a)(12).

